

EXHIBIT 35

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM ALSUP

| | | |
|-----------------------|---|---------------------------|
| ORACLE AMERICA, INC., |) | |
| |) | |
| PLAINTIFF, |) | |
| |) | |
| VS. |) | NO. C 10-03561 WHA |
| |) | |
| GOGGLE, INC., |) | |
| |) | SAN FRANCISCO, CALIFORNIA |
| DEFENDANT. |) | WEDNESDAY |
| |) | FEBRUARY 9, 2011 |
| |) | 11:00 O'CLOCK A.M. |

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF:

MORRISON & FOERSTER LLP

755 PAGE MILL ROAD

PALO ALTO, CALIFORNIA 94304-1018

BY: RICHARD S. BALLINGER, ESQUIRE

ROMAN A. SWOOPES, ESQUIRE

MARC DAVID PETERS, PH.D., PARTNER

MICHAEL A. JACOBS, PARTNER

DIANE C. GABL, ATTORNEY AT LAW

650-251-3974

AND

ANDREW C. TEMKIN, CORPORATE COUNSEL

500 ORACLE PARKWAY

M/S 50P7

REDWOOD SHORES, CALIFORNIA 94065

FURTHER APPEARANCES ON NEXT PAGE.

REPORTED BY: KATHERINE WYATT, CSR 9866, RMR, RPR

OFFICIAL REPORTER - US DISTRICT COURT

COMPUTERIZED TRANSCRIPTION BY ECLIPSE

1 YOU GETTING US IN THE ROOM TOGETHER WAS PRODUCTIVE.

2 **THE COURT:** WELL, THEN, LET'S HEAR THE AGREEMENT.

3 **MR. JACOBS:** THE AGREEMENT IS THAT BY FEBRUARY 18TH
4 BOTH SIDES WILL FURTHER SUPPLEMENT THEIR INFRINGEMENT
5 CONTENTIONS AND NONINFRINGEMENT CONTENTIONS WITH RESPECT TO THE
6 CONCERN THE OTHER SIDE RAISED.

7 TO GO DOWN A LEVEL OF DETAIL, WE HAVE EXPRESSED A
8 CONCERN WITH THE LEVEL OF TECHNICAL DETAIL IN GOGGLE'S
9 NONINFRINGEMENT CONTENTIONS. WHY IS THIS LIMITATION NOT PRESENT
10 IN THE SOURCE CODE WHERE IN THE INFRINGEMENT CONTENTIONS WE'VE
11 DELINEATED THE SOURCE CODE WHERE THAT LIMITATION CAN BE FOUND?

12 GOGGLE HAS AGREED TO GIVE IT THEIR BEST CURRENT SHOT
13 AT ARTICULATING WHY THAT LIMITATION IS NOT PRESENT IN THAT CODE
14 ITSELF, ON THE ASSUMPTION THAT THAT CODE IS OPERATING ON THE
15 HANDSETS.

16 RECIPROCALLY GOOGLE EXPRESSED A CONCERN THAT WE HAD
17 NOT ARTICULATED SUFFICIENTLY THE BASIS FOR OUR BELIEF THAT THE
18 GOOGLE -- THAT THE ANDROID CODE THAT IS ON THE GOOGLE PUBLIC
19 ANDROID WEBSITE IS, IN FACT, THE CODE THAT IS PRESENT ON THE
20 HANDSETS THAT WOULD REPRESENT THE DIRECT INFRINGEMENT IN CASES
21 OF INDIRECT INFRINGEMENT.

22 SO BY FEBRUARY 18TH, WE WILL BOTH BE SUPPLEMENTING
23 AND GIVING IT OUR BEST CURRENT SHOT WITH RESPECT TO THE OTHER
24 SIDE'S CONCERNS.

25 WE FURTHER AGREED THAT WE WILL DO ANOTHER UPDATE OF

1 OUR CONTENTIONS AMPLIFYING ON EVIDENCE THAT HAS BEEN DEVELOPED
2 IN THE INTERIM ON APRIL 1ST.

3 SO I THINK WE'RE BOTH SATISFIED THAT WE'VE MADE A LOT
4 OF PROGRESS HERE, AT LEAST, AND DON'T NEED THE COURT'S
5 INTERVENTION AT THIS TIME ON THAT, ON THE ISSUE OF OUR
6 INFRINGEMENT CONTENTIONS AND THEIR NONINFRINGEMENT CONTENTIONS.

7 **THE COURT:** SO PROPERLY STATED?

8 **MR. WEINGAERTNER:** YES, YOUR HONOR.

9 **THE COURT:** ALL RIGHT. WELL, GOOD. THANK YOU FOR
10 MAKING THAT AGREEMENT. I APPRECIATE IT.

11 IS THERE ANYTHING MORE I CAN DO FOR YOU TODAY?

12 **MR. JACOBS:** WE HAD FURTHER BRIEFED CONCERNS WITH
13 EACH OTHER'S INTERROGATORY RESPONSES. WE HAD ENOUGH TIME TO
14 DISCUSS TWO OF THOSE, ONE IMPORTANT ONE, ONE THAT WAS IMPORTANT
15 TO EACH SIDE. AND WE MADE ENOUGH PROGRESS IN RESOLVING THOSE
16 THAT WE DON'T THINK WE NEED THE COURT'S INTERVENTION ON
17 INTERROGATORIES AT THIS TIME.

18 WE BOTH AGREED THAT WHAT WE REALLY NEED TO BE DOING
19 IS ENGAGING BETTER WITH EACH OTHER IN ATTEMPTING TO RESOLVE
20 THESE DISAGREEMENTS AND EXPLAINING WHAT IS REALLY BOTHERING THE
21 OTHER SIDE AND NOT ASKING THE COURT TO CALL THESE BALLS AND
22 STRIKES AT THIS POINT.

23 **THE COURT:** AGREED?

24 **MR. WEINGAERTNER:** YES, YOUR HONOR. WE'RE IN
25 AGREEMENT WITH THAT.

1 CERTIFICATE OF REPORTER

2 I, KATHERINE WYATT, THE UNDERSIGNED, HEREBY CERTIFY
3 THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED
4 SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED BY ME INTO
5 TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE
6 RECORD OF SAID PROCEEDINGS.

7 I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR
8 ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING
9 PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED IN THE
10 OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.

11 THE FEE CHARGED AND THE PAGE FORMAT FOR THE
12 TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL
13 CONFERENCE.

14 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS
15 10TH DAY OF FEBRUARY, 2011.

16
17
18
19 _____
20 /S/ KATHERINE WYATT
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